IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE HON''BLE MR JUSTICEM.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 4201 of 2005

Between:

M/s. Sri Vijaya Lakshmi Rice & Flour Mills rep by managing Partner Chekka Sathish s/o Trinatha Rao R/o Chakradwarabandham, Rajanagaram Mandal, East Godvari District

..... PETITIONER

AND

1 The Government of A.P. Commercial Tax Dept rep by Commercial Tax Officer, Jetty Towers, Alcotgardens
Danavaipeta, Rajahmundry, East Godavari District
2 Deputy Commissioner, Commercial Tax Officer, Kakinada, East Godvari District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Mandaus declaring the notice dt 16-12-2004 issued by the 1st respondnet attaching the petitioner's rice Mill sitated at D. No. 1-1, Chakradwarabandham Village, Rajanagam Mandal, East Godavari Ditrict is illegal, arbitrary, unconstitution withoutjurisdiction and contrary to the provisions of A.P. Revenue Recovery Act and A.P. General Sales Tax Act and the same is liable to be set a side and consequently direct the respondents to drop all the proceedings against the petitioenr's rice mill and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.G.KRISHNA MURTHY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX

The Court made the following :

ORDER (Per TCSR,J)

Petitioner seeks a Writ of Mandamus declaring the notice dated 16-12-2004 issued by the 1st respondent attaching the petitioner's rice mill situated at Door No.1-1, Chakradwarabandham Village, Rajanagaram Mandal, East Godavari District as illegal, arbitrary and unconstitutional.

At the out set, it is expedient to notice certain facts for better understanding of the case. The petitioner claims to be a registered firm having been registered under the provisions of Indian Partnership Act for the purpose of running a rice mill in the name and style of Sri Vijayalakshmi Rice & Flour Mill, Chakradwarabandham, with registration No.97/1997 dated 30-04-1997. Originally, one K.V.V.Satyanarayana Murthy was the owner who got the rice and flour mill established under the name and style of Vijayalakshmi Rice and Flour Mill in an extent of one acre of land in the year 1987-88. That on 1-4-1996 the said K.V.V.Satyanarayana Murthy along with two others by name Chekka Sathish, Kancherla Sreenivasa Rao entered into a partnership firm and started doing business for a period of five months up to 20-09-1996. The said K.V.V.Satyanarayana Murthy retired from the partnership firm, when Chekka Sathish and Kancharla Sreenivasa Rao were joined as partners under a registered partnership deed dated 30-04-1997.

It is the case of the petitioner that surprisingly the impugned notice dated 16-12-2004 was served upon it in form-IV under the provisions of Section 25 of A.P. Revenue Recovery Act,1864 calling upon it to pay an amount of Rs.5,58,755/- towards the arrears of tax payable by the original owner the said

K.V.V.Satyanarayana Murthy for the assessment years 1992-93 to 1996-97. As aforesaid, the petitioner is not assailing the said notice on the ground that the petitioner is not liable to the same, but contends that the authority should have proceeded against the properties of K.V.V.Sathyanarayana Murthy, the defaulter or against his legal heirs or the estate of the said K.V.V.Satyanarayana Murthy in their hands.

Heard the learned counsel for the petitioner and the learned Special Standing Counsel for Commercial Taxes.

Obviously K.V.V.Satyanarayana Murthy was the original owner and the petitioner entered into a partnership firm with the said K.V.V.Satyanarayana Murthy, who established the rice mill in question, did business; and eventually committed default in paying the tax to the State. The demand notice dated 16-12-2004 was served on the petitioner, as contemplated under Section 25 of the Revenue Recovery Act, as per the admission of the petitioner. In view of the same, the petitioner cannot be heard to say that he has not been served with the notice and there has been violation of principles of natural justice.

In this context, it is appropriate to notice Section 18 of the A.P.G.S.T.Act which reads as under:

"Where ownership of the business of a dealer liable to pay tax is transferred, any tax or other amount payable under this Act in respect of such business and remaining unpaid at the time of the transfer, may without prejudice to any action that may be taken for its recovery from the transferor, be recoverable from the transferee, as if he were the dealer liable to pay such tax or other amount."

A perusal of the said provision makes it obvious that when the ownership of the business is transferred, any tax or other amount payable under the Act in respect of such business and remaining unpaid at the time of transfer, the same may be recovered from the transferee as if he were the dealer liable to pay such tax or other amount.

In view of this provision, the liability of the petitioner is manifest and he cannot question the impugned notice on any ground. In our considered opinion the writ petition is misconceived.

Even otherwise, notwithstanding the above legal position, the petitioner has

efficacious alternative remedy of filing a suit so as to establish its right to the property and non-liability, if any, for payment of the tax. Without availing any such remedy, complaining violations of principles of natural justice and lack of jurisdiction on the authority, who got the impugned notice issued, the petitioner cannot maintain the present writ petition.

For the above reasons, the Writ Petition fails and is dismissed.

We may make clear, that liberty is given to the petitioner to pursue the remedies available under law, notwithstanding the result of the present Writ Petition.

Under the circumstances, no order as to costs.

M.H.S.ANSARI,J

T.CH.SURYA RAO,J

07-03-2005

Stp

To:

1 The Commercial Tax Officer,The Government of A.P. Commercial Tax Dept,Jetty Towers, Alcotgardens
Danavaipeta, Rajahmundry, East Godavari District
2 Deputy Commissioner, Commercial Tax Officer, Kakinada, East Godvari District

3. Two CCs to G.P. for Commercial Tax, A.P.High Court Buildings,Hyderabad, (OUT).

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